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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re B.V. et al., Persons Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

M. L.,

Defendant and Appellant.

G052375

(Super. Ct. Nos. DP024840,  
DP024841, DP024842, DP024843)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Andre Manssourian, Judge. Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre,  
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the minors.

M.L., mother of B.V., challenges the sufficiency of the evidence to support the juvenile court's jurisdictional and dispositional orders. We affirm.

### **FACTS**

Mother and L.V, father, have four children, B.V., D.V., H.V., and A.V., born in 2003, 2005, 2007, and 2009, respectively. Father left the family in 2010 and moved to Mexico. Although he had no contact with mother, or the children, for about four years, the court ordered reunification services for him and he is not a party to this appeal.

Between April 2012 and July 2013, Orange County Social Services Agency (SSA) received three reports of abuse and general neglect regarding mother's four children. Two reports were unsubstantiated. However, in July 2013, a domestic verbal and physical argument between mother and her live-in boyfriend, J.R., resulted in J.R.'s arrest and deportation.

#### *1. Reasons for Detention*

According to SSA reports, on April 19 and 20, 2014, mother choked B.V. with his shirt collar, and she hit him in the face and head. B.V. suffered a "small laceration on [his] head, swelling and bruising on his lip, and red marks on his neck from pulling his shirt around his neck." On April 20, the children were taken into protective custody following mother's arrest for child abuse.

SSA social worker Edja Kurtovic interviewed then 10-year-old B.V. B.V. explained that he lived with his three siblings, mother, and mother's sister, Y.L., and maternal grandfather. B.V. said his mother tends to his basic needs and those of his siblings, but she also leaves the children alone during the daytime and sometimes at night. Usually she is gone for about 30 minutes, but mother once left them alone for three hours. B.V. had seen mother and J.R. argue and hit each other, and he said mother disciplines him by spanking, and that he had seen red marks on his brothers from where they had been hit by a belt.

With respect to April 19 and 20, B.V. stated mother hit him because, “I didn’t wanna pick up the room.” When she hit B.V., mother caused a small cut on the right side of his head. The following morning, mother pulled the hood of his sweatshirt from behind and choked him. B.V. said he could not breathe for about two seconds. Mother also hit him on the leg and bruised his lip. B.V. said J.R. also disciplines the children, but he never left marks, and that they had visited J.R. in Mexico the previous month. B.V. denied seeing mother or J.R. abuse drugs or alcohol, and he denied any sexual abuse, but he did say that he was afraid of mother and J.R.

Then eight-year-old, D.V., told Kurtovic that mother takes care of his basic needs, and his aunt cares for him when mother is gone. He said mother had left them home alone “maybe only five times.” D.V. said he “never [got] in trouble,” and he denied being spanked or physically abused. D.V. said B.V. would not listen to mother, and that B.V. hit mother and his siblings.

H.V., then six years old, said mother did not spank him. Instead, she had grounded him and forced him to stand against the wall. H.V. also said that when mother leaves, a neighbor takes care of them. H.V. asserted that B.V. had been grounded for hitting the younger children.

A.V., who was four years old, said mother does not spank her, but she uses a belt on her brothers. A.V. explained that mother hit B.V. one night because he refused to go to school. The hit made B.V.’s head bleed. The following morning, B.V. tried to choke H.V., which angered mother, and mother punched B.V. in the head and stomach. At the time, A.V. had a scratch on her face, but she told Kurtovic the dog did it.

Y.L. stated mother routinely used excessive discipline, and that she has reported mother to authorities several times. Y.L. also said mother frequently leaves the children unsupervised. Maternal grandfather said the children were liars.

Mother attributed B.V.’s injuries to a fall he sustained, or abuse by D.V., although she also admitted hitting B.V. She said B.V. was aggressive, hit his siblings,

and acted out at school. She also said he threatened to “call the cops,” and he lied about his injuries. Her sister, Y.L., just wanted to get her into trouble. As for leaving the children alone, mother acknowledged she frequents a friend’s apartment in their mutual complex, and she generally stays there between 35 and 40 minutes. The children are allowed to come with her, but they usually walk home without her. Mother admitted a history of domestic violence with J.R.

## *2. Petition, Reports, and Jurisdictional Findings*

On April 22, 2014, SSA filed a Welfare and Institutions Code section 300 petition alleging mother inflicted serious physical injury to B.V., provided inadequate supervision, and left him without any provision or support. The petition also alleged mother failed to protect D.V., H.V., and A.V., and that she also left them without adequate provision or support. SSA placed the children with their maternal great uncle, and his wife.

On May 7, a social worker interviewed the boys at their elementary school. As before, B.V. reported mother tended to his basic needs, but left the children alone “many times.” He also told the social worker that mother hits the children because, according to B.V., they “don’t clean up the mess.” Sometimes, mother uses a belt, and B.V. has seen bruises on his brothers. B.V. said he had seen his mother and J.R. hit each other, and he had seen his maternal grandparents do the same. Furthermore, B.V. said mother had taken the siblings to Tijuana to visit J.R.

Again, B.V. said that on the morning of April 19, mother hit him on the leg and lips. Later in the afternoon, as B.V. choked H.V., mother intervened by grabbing the hood of B.V.’s sweatshirt. As she pulled B.V. away from his brother, the sweatshirt caught his neck and cut off his breath. B.V. also said mother hit him with her fist in the head and back the day before, because he refused to clean up a mess, and she later apologized.

D.V. said he saw mother hit B.V. He denied mother used a belt, but he said their neighbor does.

H.V. also complained about mother's physical discipline, but he said she used her hands and did not leave marks. According to H.V., J.R. used a belt and left marks. H.V. denied B.V. hit or choked him, or that mother hit B.V. as a result.

A.V. was interviewed in uncle's home. She said mother uses a belt to discipline her brothers, but mother does not hit her. She also said B.V. and H.V. hit her, and she mentioned J.R. lives in Tijuana.

SSA developed a six-month case plan of services for the family. On June 4, 2014, mother stipulated to the allegations of the petition. The court ordered appropriate reunification services and continued the case for a six-month review hearing in November.<sup>1</sup>

### *3. Subsequent Petition and C.A.S.T. Reports*

When the children first came to live with uncle and his wife, they had behavior problems, frequently cried, and suffered from nightmares. A couple of months later, as uncle's wife gave A.V. a bath, A.V. positioned her dolls as if they were having sex. She said J.R., who she called father, had done that to her many times. A.V. said other people had also touched her, including mother and J.R.'s friend, Thalia, and people in a Tijuana hotel.

After his wife told uncle about this incident, he asked the boys if they knew what happened to A.V. They responded, "regarding [J.R.]?" Then, they told uncle that J.R., Thalia, and other men in Tijuana had sodomized H.V. A.V. said J.R. and other men sodomized and vaginally penetrated her, and that in Tijuana, men dressed like clowns abused her.

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<sup>1</sup> According to the record, the court continued the initial petition's six-month review hearing pending the outcome of this case.

Uncle took the children to the police, and they were interviewed by Child Abuse Services Team (CAST) social workers. B.V. told the social worker that from the time he was about nine years old until he was taken from mother's custody, he and his two brothers had been subjected to frequent sexual abuse by mother, J.R., Thalia, and unknown adult men in Tijuana. B.V. said mother forced him to anally sodomize her, and he had watched D.V. and H.V. anally sodomize mother. B.V., D.V., and H.V. reported mother fondled them, and D.V. and H.V. said mother orally copulated them.

Moreover, B.V. reported mother allowed J.R. to fondle and sodomize him, D.V., and H.V., notwithstanding the fact there was an active restraining order against J.R. He also said mother and J.R. took the children to Tijuana to be sexually abused by strangers, and that Thalia regularly fondled, orally copulated, spanked, and watched pornography with them.

CAST social workers arranged to have a nurse perform forensic examinations of the children, but the examinations were normal.

In August 2014, SSA filed a subsequent petition (Welf. & Inst. Code, § 342), alleging all four children had suffered sexual abuse (Welf. & Inst. Code, § 300, subd. (d)) and there was a substantial risk to the siblings of further abuse (Welf. & Inst. Code, § 300, subd. (j)). The affidavit submitted in support of the supplemental petition stated all four children disclosed they had been sexually abused by several individuals. This time, SSA recommended mother receive no reunification services due to the allegations of severe sexual abuse and physical harm (Welf. & Inst. Code, § 361.5, subd. (b)(6)). The goal of the case plan became adoption.

Mother denied the allegations of the subsequent petition and the court set the case for trial. In the interim, the children reaffirmed their story to SSA social workers. B.V. said he knew the allegations were serious, but he said they were true and he had nothing more to say.

D.V. told the social worker Thalia showed him a movie with naked dancing people, and he said Thalia started touching D.V.'s penis and slapping him on the butt when he was about seven years old. Mother regularly pulled on his penis until it "stands," and then put it in her mouth while Javier watched. D.V. said he had been to Tijuana about 30 times. When he is in Tijuana, men take off his pants and pull and hold his penis.

H.V. also said mother and J.R. hit and squeeze his penis, and his mother puts her tongue on his penis. Thalia licked H.V.'s penis and sometimes took a bath with him. H.V. said J.R., mother, and Thalia warned him not to tell anyone about what they did or he would get hurt.

A.V. said mother and J.R. hit her with objects and their hands. J.R. had touched her vagina. J.R. also put his penis in her bottom more than once. In fact, every time it happened, mother hit J.R. and J.R. hit mother. A.V. said this started when she was four, and that every time J.R. did this, blood came out of her vagina and bottom. Furthermore, J.R. bit A.V.'s vagina, back, and neck, and mother once put a pillow over A.V.'s face, and cut off A.V.'s air while biting A.V.'s breasts.

Uncle reported the children's behavior improved after they disclosed the abuse. However, in January 2015, D.V. was removed from uncle's home after he hit B.V. and A.V. and showed aggression with caretakers.

#### *4. Trial Testimony*

Trial commenced in May 2015. SSA dependency investigator Lauri Luchonok, who had over 15 years experience in dealing with child sex abuse cases, collected and reviewed the various police and SSA reports, and she interviewed a variety of case workers and each child. She did not interview the children in depth about the allegations, because she did not want to retraumatize them. Nevertheless, on the basis of her investigation and experience, Luchonok recommended the court sustain the allegations of the petition and deny mother reunification services.

On cross-examination, Luchonok said that in her opinion, the children corroborated each other's stories, "to a great extent." Although the children had not given much detail about the abuse, the details they had given were "very, very consistent." Any inconsistencies in the children's stories, she believed, were due to the lapse of time and fear. In the end, Luchonok testified she believed all four children were exposed to chronic sexual abuse.

As for B.V., Luchonok said she believed that for about two years, J.R. forced B.V. to penetrate J.R.'s anus with his penis and Javier sodomized B.V. She believed B.V. had been subjected to similar abuse in Tijuana.

Luchonok conceded none of the medical examinations performed on the children disclosed evidence of sexual abuse, nor did they have sexually transmitted diseases. She also conceded a more thorough exam of A.V. could have been made, but was not. However, Luchonok testified that a normal examination gives "no indication of whether or not they were abused, as those areas of our body heal fast."

##### *5. Children's Testimony*

At the request of the children's attorneys, mother was excluded from the courtroom during their testimony. B.V., now 11 years old, testified that after uncle talked to him about private parts, he told uncle that mother, J.R., and Thalia touched his private parts. According to B.V., mother frequently went to Mexico and left the children with Thalia, sometimes for several days. B.V. said Thalia touched and kissed his penis and touched his butt, and did the same thing to his brothers and A.V.

B.V. also testified J.R. lived with them for two years, but he did not do any inappropriate touching the first year. During the last year, however, J.R. touched B.V.'s bottom and put his penis in the crack of B.V.'s behind about three times a month. J.R. would move up and down and it hurt. B.V. also testified he saw J.R. do the same thing with his brothers and A.V. It happened at night and when mother was not home. B.V. said he could hear his siblings tell J.R., "No," and scream in pain.



B.V. further testified that after J.R. moved to Tijuana, mother took the children to Tijuana twice a week for about 10 months. Once there, four or five of J.R.'s friends would sexually abuse him, and his siblings. B.V., D.V., and H.V. were forced to put their penises in mother's bottom. J.R. and his friends did the same to B.V., D.V. and H.V., and J.R. put his penis in A.V.

D.V., now nine years old, testified he remembered many trips with mother to Tijuana. There, people touched his private parts and "moved" his private parts many times, but they did not put their penises in his anus. Thalia put his penis in D.V.'s bottom about twice a week, J.R. did the same about twice a month, and Thalia and mother touched his penis and squeezed it.

Seven-year-old H.V. said J.R. touched his private parts. Thalia put a penis in H.V.'s behind, but not people in Tijuana. Mother licked his private parts, and she had made him lick her behind.

A.V., now five years old and in school, denied anyone had touched her private parts except her mother during baths. She said J.R. did not touch her behind, but he did put a blue stick in her behind and blood came out. However, she did remember telling the CAST interviewer J.R. put his penis in her behind and vagina and that it hurt and made her bleed and cry. Her brothers were there when it happened, but no other person has ever done that to her. She did not remember J.R. putting anything in her front part.

#### *6. Mother's Witnesses*

The children's maternal grandfather said he had lived with the children their whole lives. He had never seen J.R. touch the children in a sexual manner, and he believed B.V. was making up stories and encouraging the younger children to emulate him. The maternal grandmother blamed the children's father because he watched pornographic movies on television before he left. According to her, when father left, the boys became rebellious and angry, and they lied a lot. She denied seeing J.R. act

inappropriately with the children and did not believe he would abuse them. She knew about the domestic violence, but she did not see mother and J.R. sexually abuse the children.

Wendy O., and her son, Kevin A., former neighbors, spent time with the family when mother came to their apartment. Wendy said B.V., D.V., and H.V. were dishonest. In fact, she testified that D.V. once threatened to call the police on her. Wendy had never met J.R.

Kevin testified he had no reason to believe the children had been sexually abused. He had never seen, nor heard anything unusual, and the children were known to lie.

Dr. Earl S. Fuller, a retired obstetrician gynecologist and expert forensic consultant in child sex abuse cases, testified he reviewed the medical reports, the children's statements, and the SSA reports. Based on Fuller's experience, he testified the type of abuse described by the children should have left some sort of injury, i.e., laceration, abrasion, or bruising. With anal sodomy, he would expect to see tearing and scarring around the anal sphincter. The younger the child the more likely anal sodomy would cause injury and scarring.

Fuller further testified all four children had been diagnosed with a mild case of Ehlers-Danlos Syndrome, a connective tissue disorder that causes poor healing and broad scarring, which increased his expectation of finding some scarring from previous abuse, if it occurred. Moreover, Fuller found no signs of trauma or injury to A.V. Her vagina and hymen were intact, which Fuller said would not be the case if A.V. had been penetrated, even if only once.

The results of the boys' medical examinations were equally at odds with Fuller's experience. He testified that while young boys can have erections, they do not last long enough to perform anal sodomy. In fact, he was unaware of any boy maintaining an erection for the purpose of having sex before age 12 or 13.

Dr. Joanna Edwards, a licensed psychologist with expertise in childhood memory, suggestibility, and memory contamination, testified children are more prone to suggestibility than adults. Young children frequently give inaccurate information. In fact, children from dysfunctional families and unstable environments tend to have higher incidences of inaccurate memories.

In this case, Edwards believed the fact the children first spoke to uncle rendered the subsequent CAST interviews unreliable. Furthermore, some of the questions posed by the CAST interviewer were repetitious and had “forced choice” options, both techniques Edwards said caused diminished reliability. And, finally, Edwards testified the greater the number of alleged perpetrators, the less reliable the story.

On the other, Edwards acknowledged she did not have any reason to believe the uncle contaminated the children’s memories, and she acknowledged children often disclose abuse when they feel safe.

## *7. Court Ruling*

After hearing the evidence and the arguments of counsel, the court came to the “conclusion that these facts are being testified to, because they’re true, and because these unspeakable acts of rape actually happened to these children. [¶] The court found these children to be credible witnesses, they were believable, and there is no possibility these children could have entered this courtroom and each independently told such resoundingly similar stories unless they were true stories.”

The court found any inconsistencies in children’s stories to be insignificant, with B.V. being the most reliable, and A.V. the least. Furthermore, as the court noted, D.V. had been removed from the great uncle’s home several months before trial, so it was unlikely the other children, or their caretakers, had an opportunity to coach him.

On the other hand, the court found implausible mother’s suggestion the children made up stories after seeing pornography. As for the lack of medical evidence,

the court mentioned the exams took place well after the abuse and were cursory, exterior exams.

The court characterized Fuller as “a marginally credible witness” and rejected his testimony that a boy under 12 or 13 years of age could not maintain an erection long enough to penetrate mother’s anus. Finally, while the court found Edwards’s testimony credible and informative, Edwards testified she had no reason to conclude memory contamination occurred in this case.

Ultimately, the court sustained the allegations of the petition, with the exception of B.V.’s initial allegations that J.R. took pictures of D.V.’s buttocks and penis and mother accepted money from men in Tijuana, and A.V.’s initial allegation mother bit her breasts. The court approved the case plan and ordered no reunification services for mother because she knew about, and participated in, the abuse. (Welf. & Inst. Code, § 361.5, subd. (b)(6).) Consequently, the court found by clear and convincing evidence that Welfare and Institutions Code section 361, subdivisions (c)(1) and (4) applied, and ordered the children to remain in their current placements.

## **DISCUSSION**

### *Sufficiency of the Evidence to Support Section 300, subdivisions (d) and (j)*

Mother asserts the juvenile court’s findings are not supported by substantial evidence. When an appellate court is called upon to determine the sufficiency of the evidence to support a judgment, “[i]t is axiomatic that an appellate court defers to the trier of fact on such determinations, and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence. We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses. [Citation.] ‘Issues of fact and credibility are questions for the trial court.’ [Citations.] It is not an appellate court’s function, in short, to redetermine the facts. [Citation.]” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.)

The subsequent petition alleged violations of Welfare and Institutions Code section 300, subdivisions (d) (sexual abuse) and (j) (abuse of sibling). Under the proper standard of review, the record contains ample evidence to support the court's determination. For instance, the court believed the children's testimony, and the testimony of a single witness deemed credible by the trier of fact may not be rejected absent physical impossibility or inherent probability. (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204.)

Mother's argument to the contrary relies heavily on Fuller's testimony. According to mother, his testimony proved the children lied about everything because it was physically impossible for them to perform the sex acts as described. In addition, Fuller stated those sex acts would necessarily have left visible injuries and scarring.

These are excellent points, and mother argued them below. But, as noted, the juvenile court heard Fuller's conclusions based on the absence of injury and scarring, and physical impossibility, and the juvenile court simply rejected them. Mother provides no cause for this court to do otherwise. Whether the boys' penises were flaccid or erect at any given moment in time does not undermine the judgment. B.V., D.V., H.V., and A.V. described a wide array of sex acts in similar terms through multiple interviews and at trial. The story they told is hard to believe, but that does not make it untrue. Substantial evidence supports the juvenile court's jurisdictional findings and dispositional orders.

**DISPOSITION**

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.